Model Ordinance Provision For A Homeownership Affordability Retention Lien

INTRODUCTION

In consultation with Attorney H. Bernard Waugh, Jr., New Hampshire Housing has drafted a model ordinance provision to implement a technique for retaining the affordability of owner-occupied housing units build under an "inclusionary zoning" approval. This model is not a complete ordinance for implementing "inclusionary zoning" as defined in New Hampshire RSA 674:21, IV(a). It only defines one technique (among many) for retaining the affordability of a housing unit approved under such an ordinance.

Because RSA 674:21, IV(a) requires that affordable housing incentives can only be voluntary on the part of the developer, a community may wish to provide a variety of options for what is meant by "affordable housing." Which option should be utilized for a particular development can be discussed and finalized by the planning board and developer during the process of board review. These issues, as well as your community's overall strategy for addressing the affordability of housing, what part an "inclusionary" zoning provision might play in that strategy, what type of incentives would be most effective in your community, and what construction standards should apply – require serious and thorough consideration, but are beyond the scope of this model.

Of the methods that are available to municipalities to retain affordability of a home for more than one buyer, this method:

- requires the least amount of interaction with and oversight of buyers/owners,
- is designed to work easily with the existing real estate, financial, and legal systems,
- allows the buyer/owner access to any appreciation or risk of depreciation (most like normal ownership),
- requires the least amount of administrative effort,
- allows for easy conversion to other forms of affordability retention if desired, and
- provides for increasing the subsidy or cashing-out if the home becomes unaffordable to the target clientele.

The administration of this model can be contracted out by a municipality and funded by each transaction. New Hampshire Housing is prepared to offer this service to municipalities that adopt the recommended model. Other entities are also qualified to administer a program based on this model, or the municipality may choose to administer it by itself.

ORDINANCE SYNOPSIS

Through an inclusionary zoning approval, new homes are created and subsequently sold to low or moderate income households for a price that is lower than the value of the units. It is not adequate to simply require the building of lower cost units. A portion of the benefit that the municipality is providing to the developer through the inclusionary zoning ordinance must be passed to the first buyer, creating a municipal interest in the property. Otherwise, the buyer would be, in effect, penalized with resale encumbrances for purchasing a home at its *full market value*.

The initial sale price is based on what would be affordable to a household with an income no greater than 80% of the area's median. The difference between the value and the price becomes a property interest in the form of a lien or second mortgage held by the municipality. The lien is generally not payable and increases in value with the Consumer Price Index.

Future resale of the property is governed by a covenant that requires an appraisal of the unit's value, a reduction of the sale price by the amount of the lien, and a calculation of the income required to buy the property at this reduced price. The income limit of the intended beneficiaries shifts with the difference between real property appreciation in the local market and household income growth in the area. Should the income shift outside of the range that is intended, the municipality may recover the value of its interest in the property.

The municipality retains a right of first refusal in most property transfers. The value of the municipal lien is limited to prevent over-subsidization, and the lien is not payable except in limited circumstances. Over-subsidization can erode the concept of home ownership, jeopardize the maintenance of the home, and potentially over-burden a low income household which while qualifying for the purchase, would build less equity in the home. Keep in mind that the owner cannot pay down the subsidy. Only the municipality can reduce the subsidy and only upon sale.

On each transaction, a fee is paid by the seller to cover program administration costs. The municipality may administer the program, or it may contract with a qualified entity of its choosing. Conventional mortgage financing can be used by the buyers, and the buyers retain property value appreciation and assume the risk of ownership. Incomes of owner-occupants are not monitored once they have purchased a home. As an alternative to ongoing municipal participation and to facilitate the use of other mechanisms to retain affordability, the model also provides for the municipality to direct sales of units to non-profit organizations whose primary purpose is to provide affordable housing.

For more information:

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